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OFFICE OF PETITIONS

In re Application of :
Pederson et al. :
Application No. 10/666,934 : DECISION GRANTING PETITION
Filed: 30 January, 2002 :
For: BOB'S BORDER HELPER :

This is a decision on the petition filed on 17 December, 2003, which is treated as a petition requesting that the above-identified application be accorded a filing date of 23 October, 2003.

On 30 January, 2002, the application was deposited. The original application papers, which included three (3) pages of specification including one (1) claim to an ornamental design and three (3) sheets of drawings, were accompanied by a Design Application Transmittal Sheet and an oath or declaration for a design application. Accordingly, the application was assigned design Application No. 29/154,901 and accorded a filing date of 30 January, 2002.

On 26 September, 2003, Initial Patent Examination Division mailed a Notice of Newly Assigned Application Number, indicating that the above-identified application had been reassigned Application No. 10/666,934 because applicants had intended to file a utility application and not a design application.

On 23 October, 2003, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application stating that the specification was missing, and that a complete specification as prescribed by 35 U.S.C. § 112 was required, and that the statutory basic filing fee and an oath or declaration in compliance with 37 CFR 1.63, identifying the application by Application Number and filing date, were required.

On 17 December, 2003, the present petition was filed, accompanied by, *inter alia*, 18 pages of specification (description and claims) and four (4) sheets of drawings.

Petitioners assert that a complete application was filed on 30 January, 2002, and that the Notice mailed on 23 October, 2003,

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should be withdrawn to the extent that it states that the application was incomplete.

A review of the Official file reveals that three (3) pages of specification and three (3) sheets of drawings were in fact filed on 30 January, 2002. As such, the application is entitled to a filing date of 30 January, 2002, using only the application papers filed on that date. Further, the claim filed on 30 January, 2002, is obviously informal for a utility application, but is sufficient to accord the application a filing date.

However, the application cannot be accorded a 30 January, 2002, filing date using the application papers filed with the present petition. If petitioners wish to have the subsequently-filed papers considered, they must be filed in the form of a preliminary amendment. If a preliminary amendment is filed, it will be reviewed by the examiner for new matter.

The petition is granted. As the petition was necessitated by Office error, the petition fee of \$130.00 is unnecessary. Petitioners may request a refund by writing to the Office of Finance, ATTN: Refund Section. A copy of this decision should accompany petitioners' request.

The "Notice of Incomplete Nonprovisional Application" mailed on 23 October, 2003, is withdrawn to the extent that it stated that the application had been deposited without a specification.

The application will be processed and examined using only the application papers present on 30 January, 2002. The specification and drawings supplied on 17 December, 2003, will not be used for processing or examination, but will be retained in the application file.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 30 January, 2002, using only the application papers filed on that date.

Telephone inquiries should be directed to the undersigned at 703 308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions